

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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| FIBER TECHNOLOGIES NETWORKS, LLC, |) | |
| f/k/a FIBER SYSTEMS, LLC, |) | |
| |) | |
| v. |) | |
| |) | |
| VERIZON NEW ENGLAND, f/k/a |) | |
| NEW ENGLAND TELEPHONE AND |) | D.T.E. 03-56 |
| TELEGRAPH COMPANY, |) | |
| |) | |
| And |) | |
| |) | |
| NORTHEAST UTILITIES SERVICE COMPANY, |) | |
| d/b/a WESTERN MASSACHUSETTS |) | |
| ELECTRIC COMPANY, |) | |
| |) | |
| And |) | |
| |) | |
| MASSACHUSETTS ELECTRIC COMPANY. |) | |
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VERIZON MASSACHUSETTS' MOTION TO DISMISS

Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon MA") hereby moves to dismiss with prejudice the so-called Amended Complaint and Petition for Declaratory Relief of Fiber Technologies Networks, LLC f/k/a Fiber Systems, LLC ("Fibertech"). In support of this motion, and for reasons more fully set forth in the attached memorandum of law filed herewith, Verizon MA states as follows:

1. As a matter of law and policy, Fibertech must not be permitted to collaterally attack the terms and conditions pursuant to which it would have been authorized to attach to the poles in question where Fibertech has already attached to such

poles unlawfully without authorization from Verizon MA, other joint owners of the poles and the appropriate municipalities; and

2. Because Fibertech failed to obtain grants of location from the appropriate municipalities before it attached to the poles in question, Fibertech is not a “licensee” within the meaning of the Pole Attachment Statute and, therefore, Fibertech lacks standing to complain of an alleged denial of access thereto and the Department of Telecommunications and Energy (the “Department”) lacks jurisdiction over such allegations.

WHEREFORE, Verizon MA respectfully requests that the Department dismiss Fibertech’s Amended Complaint with prejudice.

VERIZON MASSACHUSETTS

By its attorneys,

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